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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,457	12/15/2003	Erik J. van der Burg	014139US1	3098
38107 7590 04/28/2011 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P. O. Box 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
BATES, DAVID W				
ART UNIT		PAPER NUMBER		
3775				
NOTIFICATION DATE		DELIVERY MODE		
04/28/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/736,457

Applicant(s)

VAN DER BURG ET AL.

Examiner

DAVID W. BATES

Art Unit

3775

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-32 and 46-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-32 and 46-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 27-32, 46-51 and 58-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Hicklin (US 6,176,479 B1).

3. Regarding claims 27, 29, 31, 32, 46-51 and 58-63, Hicklin teaches a device 10 at fig. 1 capable of being implanted and attached to a hyoid bone, or positioned in a pharyngeal structure. The structure of the arms 11 and 17 is considered to be the implant body. The device has a first attachment zone 44 capable of being attached to a first portion of a hyoid bone. The device has a second attachment zone 52 capable of being attached to a second portion of a hyoid bone. The device has a flexing connection at bracket 23, between the first and second attachment zones 44 and 52, which allows pivotal movement of the first and second attachment zones with respect to each other as demonstrated by the arrows in fig. 1 and described in the abstract. The connection at the bracket 23 is considered to be a hinged connection. The device 10 has a lock (adjustment mechanism) 36 carried by the body at 33 and 42, the lock being movable with respect to at least one of the first and second attachment zones among a plurality of locked positions (at any position to which the screw is moved). When positioned in one of the plurality of locked positions, the lock 36 inhibits the pivotal

movement between the first and second attachment zones 44 and 52 to a first angular configuration as shown by fig. 1, and when positioned in a different one of the plurality of locked positions (screwed in), the lock inhibits pivotal movement between the first and second attachment zones 44 and 52 to a second angular configuration different from the first angular configuration, as demonstrated by the arrows in fig. 1.

There is no reason that the Hicklin device cannot be attached to a hyoid bone by placing a hyoid bone between the attachment regions 44 and 52 and clamping the device 10 to that bone. There is no reason that the device 10 could not be placed in a pharyngeal structure.

4. Regarding claims 28 and 30, the pivotal connection is capable of allowing the plate to be bent by flexing components relative to one another (see fig. 1, for example).

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 52-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicklin.

7. Regarding claims 52-57, Hicklin discloses the claimed invention except that Hicklin teaches use the connection means seen at fig. 1 instead of (1) a ball and socket joint, (2) a joint comprising wires, (3) a joint comprising a ribbon, or a (4) clevis pin. These are known to be obvious variants of an equivalent structure in the art. Therefore, because these joint means were art-recognized equivalents which accomplish the same result at the time the invention was made, one of ordinary skill in the art would have

found it obvious to substitute any of the means of pivoting (1) - (4) for the connection means of Hicklin.

Response to Arguments

8. Applicant's arguments with respect to claims 27-32 and 46-61 have been considered but are moot in view of the new ground(s) of rejection. The new rejections were necessitated by the amendments to the claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Mommaerts (US 7,588,579 B2) teaches an intraoral distraction device.
- Farzin-Nia et al. (US 6,267,589 B1) teach a screw expansion device.
- Ulrich et al. (US 4,445,513) teaches a device for straightening a spinal column.
- Fisher (US 298,568) teaches a lifting jack with two attachment regions connected pivotally by a threaded screw.
- Gustin et al. (US 466,016) teaches a clamping wedge with two attachment regions connected pivotally by a threaded screw.
- Janes (US 2,433,760) teaches a clamp with two attachment regions pivotally connected.
- Lowenthal (US 1,871,713) teaches a meat holding device having two attachment regions connected pivotally by a locking body.
- Holter (US 879,547) teaches a clamp having two attachment regions connected pivotally by a lock body.

- Stevenson (US 4,236,703) teaches a clamp having two attachment regions connected pivotally by a lock body.
- Dearman (US 4,666,138) teaches a clamp with two attachment regions.
- Dearman (US 3,944,202) teaches a clamp with two attachment regions.
- Dearman (US 4,623,085) teaches a clamp with two attachment regions.
- Green (US 1,569,275) teaches a clamp with two attachment regions.
- Morris (US 2,674,966) teaches a clamp with two attachment regions.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID W. BATES whose telephone number is

(571)270-7034. The examiner can normally be reached on Monday-Friday 9:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W. B./
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775